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Supreme Court, U.S.
FILED

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No._____

OFFICE OF THE CLERK

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term, 1994

ARTHUR LEWIS, M.D.

Petitioner,

v.

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, QUEENS HOSPITAL CENTER, LONG ISLAND JEWISH-HILL-SIDE MEDICAL CENTER, AND/OR LONG ISLAND JEWISH MEDICAL CENTER, QUEENS HOSPITAL CENTER AFFILIATION AND/OR LONG ISLAND JEWISH-MEDICAL CENTER, QUEENS HOSPITAL CENTER AFFILIATION,

Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Arthur Lewis, M.D.
758 East 221st Street
Bronx, New York 10467
(212) 281-9088
Petitioner, Pro Se

26 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the Appeals Court erroneously affirm the District Court's error in submitting to the jury petitioner's claim that QHC violate his First Amendment rights by terminating him in retaliation for filing a discrimination complaint with the EEOC, rather than deciding the question as a matter of law?
2. Did the Appeals Court erroneously affirm in District Court's erroneous conspiracy charge to the jury?
3. Did the Court of Appeals erroneously affirm District Court Determination that Petitioner was not denied due process?
4. Did the Court of Appeals erroneously affirm the District Court's determination that the jury verdict was not contrary to the evidence?

PARTIES

1. NEW YORK CITY HEALTH AND HOSPITALS CORPORATION
2. QUEENS HOSPITAL CENTER
3. QUEENS HOSPITAL CENTER AFFILIATION
4. LONG ISLAND JEWISH-HILLSIDE MEDICAL CENTER
5. LONG ISLAND JEWISH MEDICAL CENTER
6. ARTHUR H. LEWIS, M. D.

All of the parties to this proceeding are named in the caption.

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Appendix B Judgement United States District Court Southern District of New York, Arthur Lewis, M. D. vs NYCHHC, Queens Hospital - Long Island Hillside Medical Center, 87CIV.8433(SS) issued January 13, 1993

Appendix C Order United States Court of Appeals for the Second Circuit Arthur H. Lewis, M.D. vs NYCHHC -Queens Hospital Center-Long Island Jewish-Hillside Medical Center, Order No. 93-7231 SDNY 87-CIV-8433 Leval issued December 17, 1993

STATUES

United States Constitution
First Amendment
Fourteenth Amendment
42 U.S.C. Sec. 1981 - 1983

APPENDIX

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Petitioner, Arthur H. Lewis, M.D. respectfully pray that a wirt of certiorari be issued to review the order and judgment of the United States Court of Appeals for the Second Circuit issued on December 17, 1993.

OPINIONS BELOW

A copy of the opinion issued by the United States Court of Appeals for the Second Circuit appears below in the appendix.

JURISDICTION

This Court's Jurisdiction to review the case on Petition for writ of Certiorari is conferred under Title 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution and Statutory provision involved are the First and Fourteenth Amendments of the United States Constitution, 42 U.S.C. Secs. 1981 and 1983.

Copies are provided in the Appendix.

STATEMENT OF THE CASE

Arthur H. Lewis, M.D. filed a written complaint with the Federal Agency E.E.O.C. charging racial discrimination against the New York City Health and Hospital Corp. on December 4, 1984. The Health and Hospital Corp suspended Dr. Lewis' employment and privileges from the hospital on December 10, 1984 without due process. A written complaint of retaliation against the Health and Hospital Corp. was filed by Dr. Lewis on December 11, 1984.

Dr. Lewis petitioned the State Court of New York to obtain a hearing from the Queen's hospital. The Health and Hospital Corp. denied Dr. Lewis due process in violating the by-laws of the Health and Hospital Corp. by refusing to make available hospital files and records needed by Dr. Lewis to defend himself against the charges.

A jury trial began on December 8, 1992 in Federal Court. The jury returned a verdict in favor of the defendants, "that all motions be and they are hereby denied, and it is further ordered, that the complaints be and it is hereby dismissed in its entirety."

ARGUMENT

1. First Amendment rights decided by jury - should have been decided by judge.

2. Conspiracy charge given to jury by judge - plaintiff did not introduce conspiracy charge.

3. Verdict contradicts evidence presented and substantiated by plaintiff. Verdict was not supported (consistent with) evidence presented in trial by plaintiff.

4. Denial of Due Process.

a. No consideration was given by the Federal jury to filing of written charges to the Federal and State government of racial discrimination and retaliation by Dr. Lewis of defendant prior to the suspension letter.

b. Mr. Grabel, the person who suspended Dr. Lewis, also participated in a number of inter-hospital and extra-hospital proceedings against Dr. Lewis in contradiction and violation of the written by-laws of Queens Hospital Center and defendants.

c. Hospital denied Dr. Lewis access to files and records needed to defend Dr. Lewis as stated by the written by-

laws of Queens Hospital Center and that the defendants violated the law in denying access to these files.

d. Defendant did not give, grant, prepare or offer a deprivation hearing to Dr. Lewis when the decision was made to suspend his privilege, income and rights.

e. Improper and false information was prepared and used to suspend Dr. Lewis from his hospital appointment. Dr. Lewis did not see, nor treat one of the patients in the original charge of suspension.

f. Defendants supplied or gave false information to the Board of Professional Medical Conduct. Dr. Lewis did not see nor treat one of the patients that he was charged with malpractice.

g. Defendants or their representative submitted a letter to the Commissioner of health for the State of New York concerning Dr. Lewis' proceeding in a State hearing. Resulting in the Commissioner of Health disqualifying himself from final ruling on this State proceeding. This letter has not been furnished to Dr. Lewis or his representative.

In a legal hearing mandated by law, the written charges

made to the Board of Professional Conduct against Dr. Lewis, was dismissed in its entirety by the legally constituted committee. The Assistant Commissioner of Health or his agent decided to overrule the legal decision decided after two attempt to reverse, over rule and dismiss this legal favorable decision and instituted its own sanction, suspension and probation of Dr. Lewis' license. The Federal jury did not take into consideration the proven contradictory written and verbal testimony by the witnesses for the defendants.

CONCLUSION

For the foregoing reasons petitioner respectfully request the Court to grant the petition for writ of Certiorari.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTHUR LEWIS, M.D.,	87 CIVIL 8433(SS)
Plaintiff,	JUDGMENT
-against-	
NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, QUEENS HOSPITAL CENTER, LONG ISLAND JEWISH-HILLSIDE MEDICAL CENTER AND/OR LONG ISLAND JEWISH-MEDICAL CENTER, QUEENS HOSPITAL CENTER AFFILIATION AND/OR LONG ISLAND JEWISH MEDICAL CENTER, QUEENS HOSPITAL CENTER AFFILIATION,	
Defendants.	

A Jury Trial before the Honorable SONYA SOTOMAYOR, United States District Judge, having begun on December 8, 1992, and at the conclusion of the trial the jury having answered the attached "Verdict Sheet With Special Interrogatories," and the jury in so doing having returned a verdict in favor of the defendants, thereafter the Court having denied all motions, plaintiff having then moved for Judgment JNOV, and the Court having denied plaintiff's motion, it is,

ORDERED, ADJUDGED AND DECREED: That all motions be and they are hereby denied, and it is further,

ORDERED, that the complaint be and it is hereby dismissed in its entirety.

DATED: NEW YORK, NEW YORK
January 13, 1993

James M. Parkison
Clerk

SDNY 87-cv-8433
leval JDM

SDNY 87-CV-8422
leval JDM

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City and County of New York, on the 17th day of December , one thousand nine hundred and ninety-three.

PRESENT: HONORABLE J. DANIEL MAHONEY,
HONORABLE JOHN M. WALKER, JR.,

Circuit Judges,

HONORABLE WARREN W. EGINTON,*
District Judge.

ARTHUR H. LEWIS, M.D.,

Plaintiff-Appellant,

- against -

NEW YORK CITY HEALTH & HOSPITALS CORPORATION; QUEENS HOSPITAL CENTER; LONG ISLAND JEWISH-HILLSIDE MEDICAL CENTER, AND/OR LONG ISLAND JEWISH-MEDICAL CENTER & LONG ISLAND JEWISH-HILLSIDE MEDICAL CENTER; QUEENS HOSPITAL CENTER AFFILIATION, AND/OR LONG ISLAND JEWISH-MEDICAL CENTER, QUEENS HOSPITAL CENTER AFFILIATION

Defendants-Appellees.

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*The Hononrable Warren W. Eginton, United States District Judge for the District of Connecticut, sitting by designation.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued.

ON CONSIDERATION WHEREOF, it is now ordered, adjudged, and decreed that the judgment of said district court be and it hereby is AFFIRMED.

1. Plaintiff-appellant Arthur H. Lewis, M. D. appeals pro se from a judgment of the United States District Court for the Southern District of New York, Sonia Sotomayor, Judge, dated January 13, 1993 that dismissed Lewis' complaint after a jury trial in which the jury found against Lewis and in favor of defendants-appellees on all of Lewis' claims. Lewis essentially alleged that defendants-appellees New York City Health & Hospitals Corporation ("HHC"), Queens Hospital Center ("QHC"), and Long Island Jewish-Hillside Medical Center, Queens Hospital Center Affiliation ("LIJ") terminated his employment at QHC because of his race and/or in retaliation for his filing of a race discrimination

complaint with the Equal Employment Opportunity Commission ("EEOC"), in violation of 42 U.S.C. §§ 1981 and 1983, New York Exec. Law § 296, and New York contract law.

2. In 1983 and 1984, QHC employed Lewis as a physician in its emergency room. During 1984, Lewis treated four patients who died shortly thereafter. Lewis also attended a fifth patient and failed to diagnose or appropriately treat her "serious life threatening symptomatic ayrthmia [sic], and . . . hypotension." Hospital administrators reviewed the records for these five cases, determined that Lewis had repeatedly misdiagnosed patients and administered inappropriate treatments, and concluded that Lewis lacked the expertise and judgment necessary to be an emergency room physician.

3. On November 28, 1984, Edmund O. Rothschild, M.D., one of Lewis' supervisors, notified Lewis that he had reviewed Lewis' performance in these five cases and found it unsatisfactory. Rothschild told Lewis that he could not continue on the emergency room staff and asked Lewis to tender his resignation. Lewis did not respond to the charges or attempt to

justify his performance in those cases. Shortly after this meeting, however, Lewis filed a complaint with the EEOC. On December 10, 1984, QHC summarily suspended Lewis from its medical staff. A hearing committee constituted by QHC sustained that suspension. This decision was affirmed by Dr. Jo Ivey Boufford, a member of the HHC Board Hospital Quality Assurance Committee (the "HHC Committee"), and on October 16, 1987, by the full HHC Committee.

4. On November 27, 1987, Lewis filed the instant action in the United States District Court for the Southern District of New York. In his complaint, which he later amended on May 18, 1990, Lewis alleged that HHC, QHC and the other named defendants: (1) had violated § 1981 by discharging him or denying him eligibility for biennial reappointment because of race or in retaliation for his complaint to the EEOC; (2) had violated § 1983 by infringing his constitutional rights of free speech, procedural due process, and equal protection; (3) had violated New York Exec. Law § 296; and (4) had breached the terms of his employment contract by terminating him, and/or by not reappoint-

ing him to the staff after his initial two-year term had expired. After trial, the jury returned a seven-part special verdict that found against Lewis and for defendants-appellees on each of Lewis' claims.

5. As an initial matter, we note that Lewis has neglected to provide this court with "a transcript of such parts of the proceedings not already on file" as are relevant to the issues on appeal, as required by Fed. R. App. P. 10(b). See also Fed. R. App. P. 11(a). While we decline to dismiss this appeal for noncompliance with the Rule 10(b), but see Richardson v. Henry, 902 F.2d 414, 416 (5th Cir.) ("failure of an appellant to provide a transcript is a proper ground for dismissal of the appeal"), cert. denied, 498 U.S. 901 (1990), 1069 (1991), Lewis' failure to provide a transcript impairs our ability to review his claims. See Deines v. Vermeer Mfg. Co., 969 F.2d 977, 978-80 (10th Cir. 1992) (collecting cases).

6. Lewis contends that the district court erred in submitting to the jury his claim that QHC violated his First Amendment rights by terminating him in retaliation for filing a discrimination complaint with the EEOC, rather than deciding the question as a

matter of law. Lacking a transcript, we are unable to determine conclusively whether Lewis objected to the district court's submission of the First Amendment claim to the jury and thus preserved this issue for appeal. It appears, however, that Lewis did not preserve this issue, for he submitted a proposed jury charge that would have put the question of retaliation to the jury. In any case, whether Lewis' discrimination complaint to the EEOC was a motivating factor in QHC's decision to terminate Lewis was a question of fact that was properly for the jury to determine. See Acevedo-Diaz v. Aponte, 1 F.3d 62, 66-67 (is Cir. 1993).

7. Lewis also challenges the propriety of the district court's charge to the jury on his § 1983 claim, arguing that the court's discussion of conspiracy with respect to LIJ was improper. Again, in the absence of a transcript, we cannot be sure that Lewis preserved this issue for appeal, nor can we be ceratin of the wording of the charge actually given. The district court's proposed charge stated that, for LIJ to be liable as a state actor, the jury had to find that LIJ conspired with state actors HHC and

QHC. This statement of the law was unduly narrow, excluding other theories under which private parties may be deemed state actors when they jointly participate with state actors in unconstitutional or illegal conduct. See, e.g., Blum v. Yaretsky, 457 U.S. 991, 1004 (1982) (private conduct deemed government action when government coerces or significantly encourages that conduct); Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351, (1974) (private action deemed governmental when "there is a sufficiently close nexus between the State and the challenged action of the regulated entity"). We find, however, that any error was harmless. The jury returned a verdict against Lewis and in favor of all defendants with respect to each of Lewis' claims, so there is no basis for any determination of liability against LIJ on a theory of joint responsibility for illegal conduct.

8. Lewis also contends that QHC denied him due process during his suspension and termination proceedings by not following QHC's by-laws. Assuming, without deciding, that Lewis had a protected property interest in his employment), we

nevertheless conclude that Lewis has failed to establish that defendants-appellees denied him due process. Lewis has pointed to nothing in the record to support his allegation that QHC violated its own by-laws. In any case, "[a] breach of procedural requirements does not create a due process violation unless an individual was `denied a fair forum for protecting his state rights.'" McDarby v. Dinkins, 907 F.2d 1334, 1337 (2d Cir. 1990) (quoting Atencio v. Board of Educ., 658 F.2d 774, 779-80 (10th Cir. 1981)); see also Everhart v. Jefferson Parish Hosp. Dist. No. 2, 757 F.2d 1567, 1571 (5th Cir. 1985) (hospital executive committee violated own rules; no due process violation). We conclude that, prior to suspension, Lewis was afforded "notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." Loudermill, 470 U.S. at 546. Lewis' suspension was then sustained by QHC's hearing committee, by Dr. Boufford, and by the HHC Committee. Due process requires no more. See Caine v. Hardy, 943 F.2d 1406, 1412 (5th Cir. 1991) (in banc) ("Due process does not require an extensive formal hearing prior to a summary suspension of

medical privileges, so long as a adequate post-termination remedy exists."), cert. denied, 112 S. Ct. 1474 (1992).

9. Finally, Lewis argues that the jury's verdict was contrary to the evidence with respect to his racial discrimination claim. There is no indication on the record available to us that the jury's findings were not properly supported. In any event, as explained supra, Lewis has effectively forfeited this claim by failing to provide a trial transcript.

Hon. J. Daniel Mahoney, U.S.C.J.

Hon. John M. Walker, Jr., U.S.C.J.

Hon. Warren W. Eginton, U.S.D.J.

N.B. THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT.

UNITED STATES COURT OF APPEALS
Second Circuit
United States Courthouse
Foley Square
New York 10007

GEORGE LANGE III
Clerk

NOTICE

Local Rule effective July 1, 1992

0.40 Petitions for Rehearing

Each petition for rehearing shall include a copy of the opinion or summary order to which the petition relates.

If a petition for rehearing be found to be wholly without merit, vexatious and for delay, the court may tax a sum not exceeding $250 against petitioner in favor of his adversary, to be collected with the costs in the case.

July 1, 1992

rehrg_frm

AMENDMENT 1

Religious and Political Freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV--CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Materials for the Citizenship and Privileges and Immunities Clauses of Section 1 are set out in this volume. See the following three volumes for materials pertaining to the Due Process and Equal Protection Clauses of that section and Sections 2 to 5.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers

of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number such make citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the united States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

§ 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and shall be subject

to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
(R.S. § 1977.)

§ 1983. Civil action for deprivation of rights.

Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Acto f congress applicable exclusively to the District of Columbia shall be considered to be a stature of the District of Columbia.
(R.S. § 1979; Dec. 29, 1979, P.L. 96-170, § 1, 93 Stat. 1284.)